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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

B&G FOODS NORTH AMERICA, INC.,

Case No. 2:20-cv-00526-KJM-DB

Plaintiff,

DECLARATION OF KIM EMBRY

v.
KIM EMBRY and ENVIRONMENTAL
HEALTH ADVOCATES, INC., acting as
enforcement representatives under California
Proposition 65 on behalf of the State of
California,

Judge: Hon. Kimberly Mueller
Magistrate: Hon. Deborah Barnes
Action Filed: March 6, 2020

Defendants.

1 || I, Kim Embry, declare:

2 1. I am a named Defendant in this action. I make this declaration in support of my and
3 co-Defendant Environmental Health Advocates, Inc.’s (“EHA”) Motion for Summary Judgment.
4 I am familiar with the facts stated herein, and if called upon as a witness, I could testify to the
5 following facts based on my own personal knowledge.

6 2. From around 2017-2020, I was a citizen enforcer of Proposition 65 who
7 investigated and brought Notices of Violation (“NOV”) and lawsuits regarding acrylamide
8 exposure in food products.

9 3. This lawsuit concerns, in part, my NOV, served on April 22, 2019, and lawsuit filed
10 on March 6, 2020, regarding acrylamide found in Plaintiff B&G Foods North America, Inc.’s
11 (“B&G”) SnackWell’s Devil’s Food Fat Free Cookie Cakes (“Cookie Cakes”).

12 4. I understand that B&G alleges (e.g., at ¶ 80 of the Seconded Amended Complaint)
13 that IEH Laboratories (“IEH”) – the laboratory that tested the Cookie Cakes sample as part of my
14 investigation – destroyed the sample at my personal instruction. This is not accurate. I never
15 instructed IEH (or told my attorneys or anyone else to instruct IEH), via written, oral, or other
16 transmission, to destroy the Cookie Cakes sample after testing.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on July 15, 2024, in Barcelona, Spain.

By:

Kim Embry
Kim Embry (Jul 16, 2024 10:03 PDT)

Kim Embry
Declarant/Defendant